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**I. NON-DOMINANT STATUS IS CLEARLY WARRANTED FOR  
CELLULAR CARRIERS PARTICIPATING IN A HIGHLY  
COMPETITIVE MARKETPLACE**

In the opening comments, GTE and others documented the robust competitiveness of the cellular industry and the considerable regulatory disparities between tariffed and non-tariffed service providers in the wireless marketplace.<sup>2</sup> Based on this record, the Commission can properly conclude that the cellular market is competitive and, thereby, merits the maximum non-dominant, streamlined tariffing treatment permitted by the Communications Act.

NCRA, however, resurrects arguments it first urged upon the FCC in the CPE Bundling proceeding.<sup>3</sup> NCRA contends the cellular marketplace is not competitive based upon self-serving studies and selective, incomplete quotations from documents prepared in wholly different contexts. GTE submits that neither NCRA's arguments nor its putative authorities are persuasive.

Significantly, the Commission considered and rejected essentially the same evidence when offered previously by NCRA. In the CPE Bundling Order, far from reaching the conclusions asserted by NCRA, the agency specifically found

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<sup>2</sup> BellSouth at pp. 3-5; Century Cellunet, Inc. at pp. 4-5; McCaw at pp. 3-11; New Par at pp. 18-20; Southwestern Bell at pp. 8-9, 11-13; Telocator at pp. 2-4.

<sup>3</sup> See Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028 (1991) ("CPE Bundling Order").

that the record failed to establish the existence of the pernicious market power alleged by NCRA.<sup>4</sup> Rather, the Commission stated that, "it appears that facilities-based carriers are competing on the basis of market share, technology, service offerings, and price."<sup>5</sup> Thus, the Commission determined that the cellular service market was sufficiently competitive to support its conclusion that continuing the existing bundling practices would create no undue risk of competitive harm.

Under today's market conditions as revealed in the record here, an even stronger endorsement of the competitive state of the cellular market is warranted. Certainly, no finding of "market power" sufficient to justify a dominant classification can be made on the basis of this record, as would be required under the rules, particularly given cellular carriers' minimal share of the interstate market.<sup>6</sup> The Commission's previous observations regarding the state of cellular competition are extremely cautious by any measure, and should not deter the agency from issuing a manifestly correct determination of cellular's competitive status now.

Finally, as GTE and others have noted, cellular carriers face substantial competition from a number of wireless

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<sup>4</sup> Id. at 4029.

<sup>5</sup> Id.

<sup>6</sup> 47 C.F.R. §61.3(n) (1991). See CTIA Petition at 19 n.47.

services outside the cellular industry, such as specialized mobile radio services ("SMRs"), enhanced specialized mobile radio services ("ESMRs"), mobile satellite service ("MSS"), and other offerings. As these services are not regulated as dominant common carriers, a dominant classification for cellular carriers would result in serious regulatory disparities and competitive dislocations. Thus, notwithstanding NCRA's assertions, cellular carriers are appropriate candidates for non-dominant status.

## II. CONCLUSION

NCRA presents no valid arguments for disturbing the healthy competitive cellular market by classifying cellular licensees as dominant carriers. Nor have its comments made a showing adequate to carry the burden of demonstrating that cellular carriers wield the market power necessary to justify that status. Rather, the record before the Commission demonstrates that the public interest will be served by policies that promote rather than impede the competitive mobile marketplace. For these reasons, GTE supports CTIA's Petition and urges the Commission to expressly declare that cellular carriers are non-dominant and subject them to the

maximum streamlined tariffing requirements permissible under  
the Communications Act.

Respectfully submitted,

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